

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

David J. Smith  
Clerk of Court

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January 23, 2024

Clerk - Middle District of Alabama  
U.S. District Court  
1 CHURCH ST  
MONTGOMERY, AL 36104

Appeal Number: 24-10095-P  
Case Style: Kenneth Eugene Smith v. Commissioner, Alabama Department of Corrections, et al  
District Court Docket No: 2:23-cv-00656-RAH

**LIMITED REMAND**

Enclosed is a copy of an order remanding this appeal on a limited basis for further proceedings.  
**JURISDICTION OF THIS APPEAL IS BEING RETAINED BY THE ELEVENTH CIRCUIT.**

This appeal will be held in abeyance in this court pending disposition of limited remand proceedings in your court.

Upon completion of limited remand proceedings, please promptly send a copy of the ORDER ON REMAND to this court and certify any supplemental record of proceedings.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

CLK-3 DC Letter with Ltd Remand order

In the  
United States Court of Appeals  
For the Eleventh Circuit

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No. 24-10095

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KENNETH EUGENE SMITH,

Plaintiff-Appellant,

*versus*

COMMISSIONER, ALABAMA DEPARTMENT OF  
CORRECTIONS,  
WARDEN, HOLMAN CORRECTIONAL FACILITY,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Middle District of Alabama  
D.C. Docket No. 2:23-cv-00656-RAH

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Before WILSON, JILL PRYOR, and GRANT, Circuit Judges.

BY THE COURT:

On January 20, 2024, Plaintiff-Appellant Kenneth Eugene Smith moved in the district court to supplement the record with Smith’s counsel’s affidavit about Smith’s new physical symptoms. On January 22, 2014, the district court denied Smith’s motion to supplement the record but explained that

Pursuant Federal Rule of Civil Procedure 62.1(b), Smith shall notify the Eleventh Circuit’s clerk of court of this court’s indicative ruling that it would grant his motions to supplement the record as currently presented if the Eleventh Circuit remanded for that purpose.

Doc. 83 at 3.

When the district court provides an indicative ruling, the Federal Rules of Appellate Procedure permits us to “remand for further proceedings” while retaining jurisdiction over the appeal. Fed. R. App. P. 12.1(b). Thus, we grant Smith’s motion for limited remand to the district court for the limited purpose to entertain Smith’s motion to supplement the record. We also ask the district court to determine whether the new evidence would change the

24-10095

Order of the Court

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previous factual findings or conclusions of law in its January 10, 2024 order denying Smith’s request for a preliminary injunction.<sup>1</sup>

It is within the scope of this remand for the district court to permit the State to submit additional evidence in response to Smith’s new evidence. And to the extent that there are disputed issues of fact to be resolved, we note that it is the role of the district court, not an appellate court, to make such factual findings. *See De-Marco v. United States*, 415 U.S. 449, 450 n. 1 (1974) (“[F]actfinding is the basic responsibility of district courts, rather than appellate courts.”).

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<sup>1</sup> In light of the remand, we deny as moot his motion to supplement the record on appeal. We also grant the Commissioner’s motion to seal its response to Smith’s motion.